

REMARKS

Applicant has carefully considered the December 15, 2006 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-6 were pending in this application. In response to the Office Action dated December 15, 2006, claim 1 has been amended and new claims 7-10 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the depicted embodiments and related discussion thereof in the written description of the specification. Applicant submits that the present Amendment does not generate any new matter issue. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Claims 1 and 3-6 were rejected under 35 U.S.C. § 102(b) as being anticipated over Ichino et al. (U.S. Pat. No. 6,155,724, hereinafter “Ichino”). Applicants respectfully traverse.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). Moreover, in imposing the rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each feature of a claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993);

Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). There are significant differences between the claimed invention and device disclosed by Ichino that would preclude the factual determination that Ichino identically describes the claimed invention within the meaning of 35 U.S.C. § 102.

Ichino discloses a light transmitting module and discloses Peltier cooler 3 having a first plate 81 and a second plate 10. The Peltier cooler 3 is interposed between first plate 81 and second plate 10 and is in contact with the first plate 81 and the second plate 10. The light emitting element (LD) 1 is supported by first plate 81. The light receiving device 5 (PD) is mounted on the right region of second plate 10.

Independent claim 1, as amended, describes an optical transmitter including a thermoelectric module having a first plate made of insulating material, a second plate including a first region and a second region evenly continuing to the first region. Since the right region of second plate 10 on which light receiving device 5 is mounted is not smoothly continuous to the first region in Ichino, the smooth continuation of the second region to the first region on the same plane, in present claim 1, is different from the structural arrangement disclosed in Ichino.

The above argued differences between the claimed optical transmitter and Ichino's device undermines the factual determination that Ichino discloses the optical transmitter identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 86 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 1 and 3-6 under 35 U.S.C. § 102 for lack of novelty as evidenced by Ichino is not factually viable and, hence, solicit withdrawal thereof.

Moreover, new independent 7 describes an optical transmitter wherein an optical axis

connecting the light emitting device with the light receiving device is substantially perpendicular to the first plate. Thus, the structural arrangement of a light emitting device and a light receiving device in present claim 7 is distinct from the laser diode (LD) 1 and photodiode (PD) 5 of Ichino. Thus, newly added claims 7-10 are patentably distinct over Ichino.

Applicant gratefully acknowledges the Examiner's indication of allowable subject matter. Dependent claim 2 was indicated as allowable if recast in independent form. Applicant submits that for the reasons advocated above, claims 1-10 are believed to be in condition for allowance. Applicant therefore respectfully requests an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicant's representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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